

October 17, 2018

Jeff S. Jordan  
Assistant General Counsel  
Federal Election Commission  
Office of Complaints Examination & Legal Administration  
1050 First Street, NE  
Washington, DC 20463

Re: MUR 7492

Dear Mr. Jordan:

We write as counsel to Ben McAdams, Friends of Ben McAdams (the "Congressional Committee"), and Patrice Arent in her official capacity as Treasurer to the Congressional Committee, (collectively, "Respondents"), in response to the complaint filed by Scott Miller of the Salt Lake County Republican Party dated August 8, 2018 (the "Complaint").

The Complaint makes two allegations: *first*, it contends that the Congressional Committee has not reported any disbursements related to the "Ben Bus," and *second*, it claims that the Congressional Committee accepted contributions in the name of another, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), 52 U.S.C. § 30101, *et seq.* and Federal Election Commission ("FEC" or the "Commission") regulations. Both claims are erroneous, as discussed below, and the FEC should dismiss this matter immediately. There is no basis to find any reason to believe that Respondents violated the Act.

**I. The Congressional Committee Paid Fair Market Value for the Rental of the "Ben Bus" and Reported All of its Disbursements**

As part of its campaign efforts, the Congressional Committee rents a standard-sized bus, the "Ben Bus," from Ben McAdams for Mayor, Ben McAdams' local campaign committee from his previous mayoral race (the "Mayoral Committee"). The Congressional Committee uses the Ben Bus for campaign events and when touring the district. While the Complainant argues that he was "unable to identify any reported payments on FEC reports filed by Friends of Ben McAdams" for bus-related payments, this is absolutely inaccurate.<sup>1</sup> The Congressional Committee pays for its use of the Ben Bus and reports all of those payments as required by law.

<sup>1</sup> See Complaint at 3.

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The Commission's regulations state that when a federal campaign committee is using a privately-owned means of transportation other than an aircraft, such as an automobile, it must pay the service provider "the normal and usual fare or rental charge for a comparable commercial conveyance of sufficient size to accommodate all campaign travelers."<sup>2</sup> This is exactly what the Congressional Committee did here.

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The Ben Bus, a 1984 Bluebird Bus, was originally purchased by the Mayoral Committee on August 29, 2012 for a grand total of \$2,680.<sup>3</sup> The Congressional Committee has paid the Mayoral Committee a monthly rental fee of \$200. At this rate, the Congressional Committee would pay for the entire value of the Ben Bus in just over a year. Accordingly, this amount is clearly equal to a normal and usual rental charge. The Congressional Committee also paid for gas, maintenance, and for the current decoration of the Ben Bus. There is no possibility that the Mayoral Committee provided anything of value to the Congressional Committee that the Congressional Committee did not pay for in full. The Congressional Committee started using the Ben Bus in June 2018 and payment for the travel was made within 30 days from the receipt of the invoice, as shown by the Congressional Committee's 2018 July Quarterly Report and 2018 October Quarterly Report.<sup>4</sup>

Although the Complainant claims he was "unable to identify" any related disbursements, in reality, the Congressional Committee paid a fair market value rental rate<sup>5</sup> for the Ben Bus, as documented by the attached checks, *see Exhibit A*, and, in accordance with federal law,<sup>6</sup> the Congressional Committee reported these disbursements as part of Line 17 of the Congressional Committee's 2018 July Quarterly Report<sup>7</sup> and 2018 October Quarterly Report, *see Exhibit B*.

<sup>2</sup> 11 C.F.R. § 100.93(d).

<sup>3</sup> *See* Ben McAdams for Mayor, Financial Disclosure Report, 24 (Sept. 17, 2012), [https://slco.org/clerk/financialDisclosurePDF/2012Disclosures/August\\_September/McAdams\\_B\\_12\\_Sept\\_Interim\\_CntyMyr\\_Redacted.pdf](https://slco.org/clerk/financialDisclosurePDF/2012Disclosures/August_September/McAdams_B_12_Sept_Interim_CntyMyr_Redacted.pdf) ("2012 McAdams Report").

<sup>4</sup> 11 C.F.R. § 100.93(d).

<sup>5</sup> The fair market rental value of the Ben Bus was calculated by assessing the "usual and normal charge" for renting the bus. *See* 11 C.F.R. § 100.52(d). In this instance, the Ben Bus, a 1984 Bluebird Bus, was originally purchased by the owner on August 29, 2012 for \$2,680. *See* 2012 McAdams Report. Accordingly, the "usual and normal charge" for renting a standard-sized bus of this make and model can reasonably be estimated as \$200 per month.

<sup>6</sup> *See* 11 C.F.R. § 104.3.

<sup>7</sup> *See* Friends of Ben McAdams, 2018 July Quarterly Report, Line 17 (filed July 13, 2018), <http://docquery.fec.gov/cgi-bin/forms/C00658633/1245774/>. Notably, the first two disbursements, dated June 1, 2018 and June 16, 2018, were not itemized on the Congressional Committee's 2018 July Quarterly Report because the Congressional Committee had not yet made disbursements in excess of \$200 within the election cycle to the owner of the Ben Bus, pursuant to 11 C.F.R. § 104.3(b)(4)(i).

Moreover, the Commission has repeatedly confirmed that it is absolutely permissible for a federal campaign committee to pay the fair market value for use of resources from a previous non-federal committee of a candidate.<sup>8</sup>

## **II. The Contributions That Were Allegedly Accepted in the Name of Another Were In-Fact Made Legally by the Reported Contributors**

The Complaint also alleges that contributions to the Congressional Committee made by three minors -- Quinn Cumming, Shane Cumming, and Carina Cumming -- should have been attributed to the minors' parents because "the parents are contributors . . . two of the children have never given before, and the third has only contributed small amounts in the past."<sup>9</sup>

As the Complaint acknowledges,<sup>10</sup> minors can lawfully make contributions under Commission regulations. Under 11 C.F.R. § 110.19, an individual who is under 18 years old may make contributions to candidates and political committees if:

- The decision to contribute is made knowingly and voluntarily by the minor;
- The funds, goods or services contributed are owned or controlled by the minor, proceeds from a trust for which he or she is a beneficiary or funds withdrawn by the minor from a financial account opened and maintained in his or her name; and
- The contribution is not made using funds given to the minor as a gift for the purpose of making the contribution and is not in any way controlled by another individual.<sup>11</sup>

To the Congressional Committee's knowledge, the Quinn Cumming, Shane Cumming, and Carina Cumming each made their contributions knowingly and voluntarily. The Complainant fails to provide any evidence to suggest that the Congressional Committee had any factual knowledge or reason to believe that any of the contributions at issue were made in the name of another.<sup>12</sup> The Congressional Committee cannot be liable for knowingly accepting any of the relevant contributions in the name of another.

<sup>8</sup> See *Transfer of Funds from State to Federal Campaigns*, 58 Fed. Reg. 3474, 3475 (Jan. 8, 1993) ("the rule should not be read to proscribe the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value"); see also FEC Matter Under Review 6784, General Counsel's Report, 11-13 (Sept. 11, 2014); Statement of Reasons of Comm'rs Walther, Petersen, Bauerly, Hunter, and Weintraub, MUR 5964 (March 17, 2009); FEC Ad. Op. 1992-19, 1-2 (July 10, 1992).

<sup>9</sup> See Complaint at 5.

<sup>10</sup> See *id.*

<sup>11</sup> 11 C.F.R. § 110.19.

<sup>12</sup> See generally Complaint.

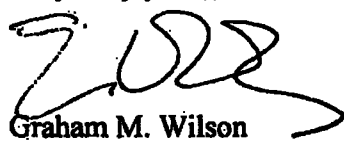
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A committee can only be liable for accepting a contribution made in the name of another if the committee *knowingly* accepted the contribution made by one person in the name of another person.<sup>13</sup> The Commission has repeatedly interpreted "knowingly" in this context to mean that one has "knowledge of the operative facts of the activity, not knowledge of the legality of the activity."<sup>14</sup> The Complaint provided no reason for the Congressional Committee to suspect, let alone "know," that there was any issue with any of these contributions, and moreover, it is still the Congressional Committee's understanding that the contributions were absolutely legal and appropriate in all respects. It is the Congressional Committee's understanding that Quinn Cumming, Shane Cumming, and Carina Cumming have submitted a response to the Commission indicating that the contributions are valid contributions, made in accordance with 11 C.F.R. § 110.19.

### III. Conclusion

As described herein, the Complaint does not state any facts, which, if proven true, would constitute a violation of the Act. Accordingly, the Commission should reject the Complaint's request for an investigation, find no reason to believe that a violation of the Act or Commission regulations has occurred, and immediately dismiss this matter.

Very truly yours,



Graham M. Wilson  
Emma Olson Sharkey  
Counsel to Respondents

<sup>13</sup> 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(iv).

<sup>14</sup> See FEC Matter Under Review 4322/4650, General Counsel's Report, 5-6 (Dec. 2, 1998).

10/16/2018

## EXHIBIT A

View Transaction Printable View

Font Size

[Close Window](#) [Print Screen](#)

### View Transaction Printable View

#### Transaction Information

Account: Non Profit - xxxx  
Description: CHECK  
Amount: \$-100.00  
Status: Cleared  
Customer Reference Number: 1109  
Transaction: Check 1109

Note: Check and Deposit Images older than 180 days are not available online, but can be obtained by ordering copies by visiting the Services tab. In order to maintain service, there is scheduled maintenance every Saturday at 11:00 PM and on the last day of each month at 7:00 PM. During this time, which typically lasts about six hours, your images may not be available. We apologize for any inconvenience this may cause.

10044444001

FRIENDS OF BEN MCADAMS 2205 SOUTH 1000 EAST SALT LAKE CITY, UTAH 84106		ZIONS BANK 814/1240	1109 6/1/2018
PAY TO THE ORDER OF	Ben for Mayor	\$**100.00	
One Hundred and 00/100		DOLLARS	
Ben for Mayor			
Bus rental - June			
<i>Carolyn Roll</i>			

Enlarge  
Save

PAY TO THE ORDER OF ZIONS BANK FOR DEPOSIT ONLY MEMBER OF THE CREDIT UNION FEDERAL RESERVE	
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**Close Window** **Print Screen**

## View Transaction Printable View

### Transaction Information

Account:	Non Profit - xxxxx
Description:	CHECK
Amount:	\$-100.00
Status:	Cleared
Customer Reference Number:	1136
Transaction:	Check 1136

**Note:** Check and Deposit images older than 180 days are not available online, but can be obtained by ordering copies by visiting the Services tab. In order to maintain service, there is scheduled maintenance every Saturday at 11:00 PM and on the last day of each month at 7:00 PM. During this time, which typically lasts about six hours, your images may not be available. We apologize for any inconvenience this may cause.

**FRIENDS OF BEN MCADAMS**  
 2203 SOUTH 1000 EAST  
 SALT LAKE CITY, UTAH 84106

MONS BANK  
 31-6/1140

1136  
 8/16/2015

PAY TO THE ORDER OF Ben for Mayor \$100.00

One Hundred and 00/100

Ben for Mayor

DOLLARS

but rental

*Carolyn Roll*

**Enlarge**  
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PAY TO THE ORDER OF  
ZIONS BANK  
FOR DEPOSIT ONLY  
MEMORANDUM FOR BULL MARKET WATCH  
CITY OF LOS ANGELES

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10/16/2018

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### Transaction Information

Account: Non Profit - xxxxx  
Description: CHECK  
Amount: \$-200.00  
Status: Cleared  
Customer Reference Number: 1141  
Transaction: Check 1141

Note: Check and Deposit images older than 180 days are not available online, but can be obtained by ordering copies by visiting the Services tab. In order to maintain service, there is scheduled maintenance every Saturday at 11:00 PM and on the last day of each month at 7:00 PM. During this time, which typically lasts about six hours, your images may not be available. We apologize for any inconvenience this may cause.

10041412018

<b>FRIENDS OF BEN MCADAMS</b> 2225 SOUTH 1000 EAST SALT LAKE CITY, UTAH 84106		<b>ZIONS BANK</b> 31-071218	<b>1141</b> 7/1/2018
PAY TO THE ORDER OF Ben for Mayor		\$**200.00	
Two Hundred and 00/100		DOLLARS	
Ben for Mayor		<i>Carolyn Roll</i>	
bus rental			

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PAY TO THE ORDER OF		ZIONS BANK	
FOR DEPOSIT ONLY		MICHAEL FOR SALT LAKE COUNTY MARS	
00285830			

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Transaction Information

Account: Non Profit - xxxxx  
Description: CHECK  
Amount: \$-200.00  
Status: Cleared  
Customer Reference Number: 1158  
Transaction: Check 1158

Note: Check and Deposit images older than 180 days are not available online, but can be obtained by ordering copies by visiting the Services tab. In order to maintain service, there is scheduled maintenance every Saturday at 11:00 PM and on the last day of each month at 7:00 PM. During this time, which typically lasts about six hours, your images may not be available. We apologize for any inconvenience this may cause.

100444110011

FRIENDS OF BEN MCADAMS 2205 SOUTH 1000 EAST SALT LAKE CITY, UTAH 84106		ZIONS BANK 11/1/2018	1158
PAY TO THE ORDER OF Ben for Mayor		\$-200.00	8/1/2018
Two Hundred and 00/100			DOLLARS
Ben for Mayor			
bus rental August			
<i>Carolyn Roll</i>			

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PAY TO THE ORDER OF ZIONS BANK FOR DEPOSIT ONLY 100444110011	
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### Transaction Information

Account: Non Profit - xxxx  
Description: CHECK  
Amount: \$-200.00  
Status: Cleared  
Customer Reference Number: 1181  
Transaction: Check 1181

Note: Check and Deposit images older than 180 days are not available online, but can be obtained by ordering copies by visiting the Services tab. In order to maintain service, there is scheduled maintenance every Saturday at 11:00 PM and on the last day of each month at 7:00 PM. During this time, which typically lasts about six hours, your images may not be available. We apologize for any inconvenience this may cause.

10044472678

FRIENDS OF BEN MCADAMS 2205 SOUTH 1000 EAST SALT LAKE CITY, UTAH 84106		20000 BANK 31-4/1910	1181 9/1/2018
PAY TO THE ORDER OF	Ben for Mayor	\$**200.00	
Two Hundred and 00/100			DOLLARS
Ben for Mayor			
bus rental - Aug			
			<i>Carolyn Roll</i>

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PAY TO THE ORDER OF FRIENDS OF BEN MCADAMS FOR DEPOSIT ONLY JACQUES FOR SALT LAKE COUNTY MAJOR	
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### Transaction Information

Account: Non Profit - 10000  
Description: CHECK  
Amount: \$-200.00  
Status: Cleared  
Customer Reference Number: 1220  
Transaction: Check 1220

Note: Check and Deposit Images older than 180 days are not available online, but can be obtained by ordering copies by visiting the Services tab. In order to maintain service, there is scheduled maintenance every Saturday at 11:00 PM and on the last day of each month at 7:00 PM. During this time, which typically lasts about six hours, your images may not be available. We apologize for any inconvenience this may cause.

10044420009

FRIENDS OF BEN MCADAMS 2205 SOUTH 1000 EAST SALT LAKE CITY, UTAH 84106		1220
PAY TO THE ORDER OF Ben for Mayor		\$ 200.00
Two Hundred and 00/100		DOLLARS
Ben for Mayor		
<i>Carolyn Roll</i>		

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PAY TO THE ORDER OF FRIENDS OF BEN MCADAMS 2205 SOUTH 1000 EAST SALT LAKE CITY, UTAH 84106	
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**EXHIBIT B****SCHEDULE B (FEC Form 3)  
ITEMIZED DISBURSEMENTS**Use separate schedule(s)  
for each category of the  
Detailed Summary PageFOR LINE NUMBER:  
(check only one)

PAGE 1080 OF 1127

<input checked="" type="checkbox"/> 17	<input type="checkbox"/> 18	<input type="checkbox"/> 19a	<input type="checkbox"/> 19b
<input type="checkbox"/> 20a	<input type="checkbox"/> 20b	<input type="checkbox"/> 20c	<input type="checkbox"/> 21

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)

Friends of Ben McAdams

Full Name (Last, First, Middle Initial)

**A. Ben McAdams for Mayor**

Mailing Address 915 E Simpson Ave

City  
Salt Lake CityState  
UTZip Code  
84106-2310Purpose of Disbursement  
Bus rental

Candidate Name

Office Sought: ☐ House  
☐ Senate  
☐ PresidentDisbursement For: 2018  
☐ Primary ☒ General  
☐ Other (specify) ▼

State: District:

Date of Disbursement

M M	D D	Y Y Y Y
07	01	2018

FEC Identification Number

C

Amount of Each Disbursement this Period

200.00

Transaction ID : VPEEYA7GRN1

☐ Memo Item

Full Name (Last, First, Middle Initial)

**B. Ben McAdams for Mayor**

Mailing Address 915 E Simpson Ave

City  
Salt Lake CityState  
UTZip Code  
84106-2310Purpose of Disbursement  
Bus rental

Candidate Name

Office Sought: ☐ House  
☐ Senate  
☐ PresidentDisbursement For: 2018  
☐ Primary ☒ General  
☐ Other (specify) ▼

State: District:

Date of Disbursement

M M	D D	Y Y Y Y
08	01	2018

FEC Identification Number

C

Amount of Each Disbursement this Period

200.00

Transaction ID : VPEEYA7GRP9

☐ Memo Item

Full Name (Last, First, Middle Initial)

**C. Ben McAdams for Mayor**

Mailing Address 915 E Simpson Ave

City  
Salt Lake CityState  
UTZip Code  
84106-2310Purpose of Disbursement  
Bus rental

Candidate Name

Office Sought: ☐ House  
☐ Senate  
☐ PresidentDisbursement For: 2018  
☐ Primary ☒ General  
☐ Other (specify) ▼

State: District:

Date of Disbursement

M M	D D	Y Y Y Y
09	01	2018

FEC Identification Number

C

Amount of Each Disbursement this Period

200.00

Transaction ID : VPEEYA7H0Q4

☐ Memo Item

SUBTOTAL of Disbursements This Page (optional).....▶

600.00

TOTAL This Period (last page this line number only).....▶